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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

GITA GREEN, INC.,

Plaintiff,

vs.

WEPE INDUSTRY, L.L.C.

Defendant.

Case No.: 2:14-cv-00715-JAD-GWF

**~~PROPOSED~~ PROTECTIVE ORDER**

This Protective Order is issued to facilitate document disclosure and production under the Local Rules of this Court and the FEDERAL RULES OF CIVIL PROCEDURE. Unless modified pursuant to the terms contained in this Order, this Order shall remain in effect through the conclusion of this litigation.

In support of this Order, the Court finds that:

I. Confidential Documents and Confidential Information that bear significantly on the parties' claims or defenses are likely to be disclosed or produced during the course of discovery in this litigation;

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1 II. The parties to this litigation may assert that public dissemination and disclosure of  
 2 Confidential Documents or Information could severely injure or damage the party disclosing or  
 3 producing the Confidential Documents or Information and could place that party at a competitive  
 4 disadvantage;

5 III. Counsel for the party or parties receiving Confidential Documents or Information  
 6 are presently without sufficient information to accept the representation(s) made by the party or  
 7 parties producing Confidential Documents or Information as to the confidential and/or trade  
 8 secret nature of such Confidential Documents or Information; and

9 IV. To protect the respective interests of the parties and to facilitate the progress of  
 10 disclosure and discovery in this case, the following Order should issue:

11 **IT IS THEREFORE ORDERED THAT:**

12 For purposes of this Order, the following definitions shall apply:

13 A. "Documents" has the meaning set forth in FEDERAL RULE OF CIVIL PROCEDURE  
 14 34(a), and includes all tangible written, recorded (electronically or otherwise), or graphic  
 15 material, whether produced or created by a party or another person, and whether produced  
 16 pursuant to the discovery rules, by agreement, or otherwise, and includes, without limitation,  
 17 documents, interrogatory answers, responses to requests for admissions, deposition transcripts  
 18 and exhibits, pleadings, motions, affidavits, affirmations, and briefs, or any portion of any of the  
 19 above.  
 20

21 B. "Confidential Document" means any Document which contains Confidential  
 22 Information and that a party to this action or the producing person marks with the legend  
 23 "CONFIDENTIAL."  
 24

25 C. "Confidential Information" means any trade secret or other confidential research,  
 26 development or commercial information within the meaning of FEDERAL RULE OF CIVIL  
 27 PROCEDURE 26(c)(7), and may be contained in Confidential Documents and/or in testimony  
 28

1 designated as "CONFIDENTIAL," as set forth below. All testimony that refers or relates to  
2 Confidential Documents or Information, and all deposition exhibits that consist of or contain  
3 Confidential Documents or Information, shall automatically be deemed to carry those  
4 designations. Confidential Information further includes information disclosed orally that contains  
5 trade secret or other confidential research, development or commercial information within the  
6 meaning of FEDERAL RULE OF CIVIL PROCEDURE 26(c)(7), provided that, within ten days after  
7 such disclosure, if the disclosing party delivers to the receiving party a written document  
8 describing the information disclosed and referencing the place and date of such disclosure.  
9 Confidential Information does not include any document or information that is: (i) generally  
10 known to those in the industry prior to any disclosure hereunder, or (ii) generally known to those  
11 in the industry without breach of this Order; or (iii) approved for release by written authorization  
12 of the party who owns the information; or (iv) disclosed to the receiving party by a third party  
13 lawfully possessing such document or information and under no obligation of confidentiality; or  
14 (v) developed independently by the receiving party or any employees or designated agents  
15 thereof independently and without any use whatsoever of information received by the receiving  
16 party under this Order; (vi) advertising materials, (vii) materials that on their face show that they  
17 have been published to the general public, or (viii) documents that have been submitted to any  
18 governmental entity without request for or statutory entitlement to confidential treatment. The  
19 parties acknowledge that either party may analyze and reverse engineer publicly available object  
20 code distributed with the parties' products without violating the provisions of this Order, so long  
21 as such reverse engineering is done solely for the purpose of this litigation.

24 D. Information designated as "CONFIDENTIAL" may be additionally designated  
25 "ATTORNEYS' EYES ONLY". The "ATTORNEYS' EYES ONLY" designation is reserved  
26 for Confidential Information that constitutes proprietary financial or technical data or  
27 commercially sensitive competitive information, including, but not limited to, Confidential  
28

1 Information obtained from a nonparty pursuant to a current Nondisclosure Agreement (NDA),  
2 Confidential Information relating to future products not yet commercially released, strategic  
3 plans, marketing information, financial information, consumer account or transaction  
4 information, and any other information the disclosure of which is likely to cause harm to the  
5 competitive position of the producing party.

6 E. The term “copy” as used herein means any photographic, mechanical, electronic  
7 or computerized copy or reproduction of any document or thing, or any verbatim transcript, in  
8 whole or in part, of such document or thing.

9  
10 **THE FOLLOWING PROVISIONS SHALL GOVERN THE TREATMENT OF**  
11 **CONFIDENTIAL AND ATTORNEYS EYES ONLY DOCUMENTS AND**  
12 **INFORMATION:**

13 1. Confidential Documents and Information shall not be used or shown,  
14 disseminated, or in any way communicated to anyone for any purpose whatsoever, except as  
15 provided below.

16 2. Confidential Documents and Information that are designated “CONFIDENTIAL”  
17 may be disclosed only to the following persons (“Qualified Persons”):

18 a. Two client representatives for each party, provided that each such  
19 representative is involved in the prosecution or defense of this action and has the  
20 need to know such information in the prosecution or defense of this action. Each  
21 party shall identify its designated representatives to the other parties before  
22 granting such access;

23  
24 b. Outside counsel of record for the parties to this action, including their  
25 paralegals, assistants, and secretaries; employees or agents of counsel, including  
26 jury and graphics consultants and copying or document scanning personnel  
27 retained by counsel, to the extent reasonably necessary to render professional  
28

1 services in this action, including appeals, provided that such persons are actively  
2 engaged in the prosecution or defense of this action, *but specifically excluding*  
3 any persons that are engaged or may reasonably be expected to engage in the  
4 future in any activities pertaining to the prosecution of one or more patent  
5 applications relating to any system or method of **filter cleaning or maintenance**  
6 for any party to this action.

7 c. Persons identified in a document designated as “CONFIDENTIAL” as an  
8 author or co-author of the document, or persons identified on the document as one  
9 to whom a copy of such document was sent prior to its production in this action;

10 d. Witnesses where at least one of the following conditions applies:

11 (i) the witness is a current employee of the designating party;

12 (ii) the witness is an inventor of a patent in suit owned by the  
13 designating party and the disclosure is limited to technical documents the  
14 witness authored or received during the time when such person was an  
15 employee of the designating party;

16 (iii) the witness’ name appears on the Confidential Document or  
17 Information as a person who has previously seen or had access to the  
18 Confidential Document or Information, or if it is reasonably established  
19 that the witness has knowledge of information contained in the document  
20 about which the witness is being examined;

21 (iv) the designating party has consented on the record of the deposition  
22 to the showing of the Confidential Document or Information to the  
23 witness; or

24 (v) the party wishing to show the witness the Confidential Document  
25 or Information notifies the designating party of that desire, with a specific  
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1 listing of the Confidential Documents or Information to be so shown, and  
2 the designating party consents in writing to such showing, which consent  
3 will not be unreasonably withheld. If, however, such consent in writing is  
4 not received within ten (10) business days of the notice, the designating  
5 party must move for an order prohibiting the proposed disclosure.

6 (vi) Witnesses being shown Confidential Documents or Information  
7 under subparagraphs (d) (ii), (iii), (iv) or (v) shall not be allowed to retain  
8 copies of the Confidential Documents or Information. However, a witness  
9 who was shown Confidential Documents or Information during a  
10 deposition may review the Confidential Documents or Information while  
11 reviewing his or her transcript, provided that any Confidential Documents  
12 or Information is not retained by the witness after he or she has completed  
13 his or her review of the transcript for accuracy;  
14

15 e. Court officials involved in this action;

16 f. Court reporting personnel involved in taking or transcribing testimony in  
17 this action, provided that any such court reporting personnel agrees that all  
18 Confidential Documents and Information designated as such under this Order  
19 shall remain "confidential" and shall not be disclosed, except pursuant to the  
20 terms of this Order, and that any notes or transcriptions of such testimony (and  
21 any accompanying exhibits) will be retained by the reporter or delivered to  
22 counsel of record;  
23

24 g. Outside consultants or experts, including their clerical support staff,  
25 retained for the purpose of assisting counsel in this action, subject to the condition  
26 that such consultant or expert, prior to any disclosure of Confidential Documents  
27 or Information thereto, be identified to the opposing party no less than ten (10)  
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1 business days prior to a proposed disclosure, with full identification of the  
2 proposed consultant or expert to whom the Confidential Documents or  
3 Information is to be disclosed, including the Curriculum Vitae of the proposed  
4 consultant or expert, a list of all publications by the proposed consultant or expert  
5 for the past ten (10) years, an identification of any previous or current relationship  
6 (personal or professional) with any of the parties, and a list identifying all lawsuits  
7 in which the proposed consultant or expert was involved in any capacity for the  
8 past four (4) years, with the proviso that, if within that ten (10) day period, an  
9 objection is stated to such disclosure, no such disclosure will be made without  
10 prior court approval.

11  
12 3. Confidential Documents and Information designated "ATTORNEYS' EYES  
13 ONLY" shall be available only to persons identified under Paragraphs 2(b), (c), (d), (e), (f), and  
14 (g) above, and shall not be available to persons identified under Paragraph 2(a) above.

15 4. Confidential Documents and Information shall be used solely for the prosecution  
16 or defense of this action.

17 5. Notwithstanding the provisions of paragraphs 2 or 3 hereto, a producing party or  
18 person is free to disclose or use his, her or its own Confidential Documents or Information  
19 without restriction.

20  
21 6. Before any person described in paragraph 2(a), 2(d)(v) or 2(g) is given access to  
22 Confidential Documents or Information, the individual to whom disclosure is to be made shall  
23 sign and date an undertaking substantially in the form of the attached Exhibit A. A copy of such  
24 undertaking shall be held by counsel of record for the party so disclosing the Confidential  
25 Documents or Information. The parties agree not to use the undertakings for any purpose other  
26 than monitoring and enforcing compliance with this protective order.

7. Counsel for the parties to whom Confidential Documents or Information have been furnished shall be responsible for restricting disclosure in accordance with the provisions of this Order.

8. Any document or thing containing or embodying Confidential Documents or Information that is to be filed in this action shall be filed in sealed envelopes or other sealed containers which shall bear the caption of the case, shall identify the contents for docketing purposes, shall bear a statement substantially in the form:

CONFIDENTIAL  
(or CONFIDENTIAL –ATTORNEYS EYES ONLY)

Filed under Protective Order. This envelope is not be opened nor the contents thereof displayed or revealed except by order of the Court or by agreement of the parties.

Outside attorneys of record for the parties are hereby authorized to be persons who may retrieve confidential exhibits and/or other confidential matters filed with the Court upon termination of this litigation without further order of this Court, and are the persons to whom such confidential exhibits or other confidential matters may be returned by the Clerk of the Court, if they are not so retrieved. No material or copies thereof so filed shall be released except by order of the Court, to outside counsel of record or as otherwise provided for hereunder.

9. At a deposition or within thirty (30) calendar days after receipt of the deposition transcript, counsel for any party or the deponent may designate specific testimony or transcript pages as Confidential by notice on the record at the deposition or in writing to counsel for all parties and for the deponent. Until the expiration of the thirty day period, all of the testimony contained in the transcript volume shall be treated as Confidential unless otherwise designated by a party at the deposition. To the extent that Confidential Documents or Information contained therein are used in depositions, at hearings, or at trial, such documents or information shall remain subject to the provisions of this Order, along with the transcript pages of the deposition



1 testimony and/or trial testimony referring to the Confidential Documents or Information, without  
2 the need for further designation.

3 10. At any time after the delivery of Confidential Documents or Information, counsel  
4 for the party or parties receiving the Confidential Documents or Information may challenge the  
5 Confidential designation of all or any portion thereof by providing written notice thereof to  
6 counsel for the disclosing party, stating the reasons in the challenge and the proposed re-  
7 designation.

8 The disclosing party shall then have five (5) business days from the date of receipt of the  
9 challenge to:

- 10 (i) advise the receiving parties whether or not it persists in its designation;  
11 and  
12 (ii) if it persists in its designation, to explain the reason for the particular  
13 designation.  
14

15 If the disclosing party fails to respond within five (5) business days after receipt  
16 of the challenge, the material shall be deemed redesignated.

17 If the disclosing party gives notice that it persists in its designation, and the  
18 receiving party continues to challenge the designation, the receiving party shall  
19 notify the disclosing party of its continuing challenge within five (5) business  
20 days after receipt of the disclosing party's response. The disclosing party may  
21 then move the court for a protective order or any other order to maintain the  
22 designation. The burden of proving that the designation is proper shall be upon  
23 the disclosing party.  
24

25 If the disclosing party fails to make a motion within five (5) business days of the  
26 notice of continuing challenge, the information will be re-designated to the  
27 category requested by the receiving party.  
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1 Disclosure of information with disputed designation shall not be made until the  
2 challenge is resolved by agreement of the parties or by the process outlined  
3 herein, or ruling of the Court.

4 11. A designating party that inadvertently, accidentally, mistakenly or through other  
5 error fails to mark an item as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the time  
6 of the production, or fails to provide a written description of orally disclosed Confidential  
7 Information, shall not be deemed to have waived, in whole or in part, any claim of  
8 confidentiality, either as to the specific information disclosed or as to any other information  
9 thereto on the same or related subject matter. In the case of documents, any such mis-designated  
10 or undesignated materials shall be designated as "CONFIDENTIAL" as soon as reasonably  
11 possible after the producing party becomes aware of the failure to mark. Such correction and  
12 notice thereof shall be made in writing, accompanied by substitute copies of each item,  
13 appropriately marked as Confidential material. Within five days of receipt of the substitute  
14 copies, the receiving party shall return or destroy the previously unmarked items and all copies  
15 thereof. In the case of orally disclosed information, a written description of the information must  
16 be provided, as set forth above.  
17

18 12. If a party introduces Confidential Documents or Information at a public hearing  
19 without an order excluding persons not entitled to access to such documents and information, the  
20 provisions of this Protective Order shall not thereafter govern the use of such Confidential  
21 Documents or Information.  
22

23 13. The party or parties receiving Confidential Documents or Information shall not  
24 under any circumstances sell, offer for sale, advertise, or publicize them.

25 14. After termination of this litigation, the provisions of this Order shall continue to  
26 be binding, except with respect to those documents and information that become a matter of  
27 public record. This Court retains and shall have continuing jurisdiction over the parties and  
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1 recipients of the Confidential Documents and Information for enforcement of the provisions of  
2 this Order following termination of this litigation.

3 15. This Order shall apply to any non-party to this action who shall be called upon to  
4 make discovery or provide deposition or other testimony in connection with this action. Such  
5 non-party shall be deemed to avail itself of the provisions and protections of this Protective  
6 Order by making production consistent with it.

7 16. The provisions of this Order shall not terminate at the conclusion of this action.  
8 Within 30 days after the final conclusion of all aspects of this action by judgment not subject to  
9 appeal or by settlement, Confidential Documents and all copies of same, and all documents  
10 containing or referring to Confidential Information, other than trial and deposition transcripts,  
11 trial and deposition exhibits, and briefs, counsel work papers, memoranda or other documents or  
12 papers filed with the Court, and declarations executed pursuant to paragraph 7 hereto, shall either  
13 be returned to the producing party or person or destroyed, with the exception of source code  
14 documents and things, which shall be returned to the producing party. All parties or persons that  
15 received Confidential Documents shall make certification of compliance with this section and  
16 shall either deliver same to counsel for the person that produced the documents not more than 60  
17 days after the final conclusion of this action. The Clerk of the Court may return to counsel for  
18 the parties, or destroy, any sealed material at the end of the litigation, including any appeals.  
19

20 17. The inadvertent, accidental, mistaken or erroneous production of documents  
21 subject to the protection of the attorney-client privilege, work product doctrine, or other privilege  
22 shall not constitute a waiver of such privilege or protection, and does not put at issue or  
23 constitute the affirmative use of the advice of counsel or of any privileged communications. The  
24 producing party shall notify the receiving party in writing of any such inadvertent, accidental,  
25 mistaken or erroneous production as soon as reasonably possible after the producing party  
26 becomes aware of it. Upon receipt of such notice, the receiving party shall, within three (3)  
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1 business days, or sooner if that is possible, return all such documents to the producing party,  
2 along with any copies made thereof. The non-waiver protections of this provision extend to  
3 other State or Federal proceedings pursuant to Rule 502(d) of the Federal Rules of Evidence.

4 18. Any persons provided Confidential Information or Attorneys' Eyes Only  
5 Information pursuant to this Protective Order under paragraph 2(b) will be prohibited from any  
6 activities pertaining to the prosecution of any patent applications relating to any system or  
7 method of **filter cleaning or maintenance** for a period of one (1) year from the conclusion of  
8 this litigation and any related litigations and appeals *vis-à-vis* the affected party.

9 19. No party or counsel shall contact or communicate with any expert who has  
10 currently or previously consulted with or been retained by an adverse party with respect to the  
11 subject matter of the technology involved in this action without the consent of the party by whom  
12 the expert was consulted or retained.

13 20. If any person or entity subject to this Protective Order is subpoenaed, or otherwise  
14 legally required to produce information that another party has designated "CONFIDENTIAL" or  
15 "CONFIDENTIAL ATTORNEYS EYES ONLY" under this Protective Order, the person  
16 receiving the subpoena or order shall (a) inform the producing party of the fact of the request and  
17 provide a copy of the request and (b) notify the requesting party of the existence and terms of  
18 this Protective Order. Thereafter, it shall be the burden of the producing party to file such  
19 objections, motions or other papers that may be necessary to preserve the confidentiality of the  
20 documents sought by the subpoena or court order. The person or entity receiving the subpoena  
21 or court order shall be entitled to comply with such subpoena or court order unless it is quashed  
22 or modified before the time required for compliance, and the producing party provides timely  
23 notice of the order quashing or modifying the subpoena or court order.

24 21. This Order shall be binding upon the parties and their attorneys, successors,  
25 executors, personal representatives, administrators, heirs, legal representatives, assigns,

1 subsidiaries, divisions, employees, agents, independent contractors, or other persons or  
2 organizations over which they have control.

3       The entry of this Protective Order shall not prevent any party from applying to the Court  
4 for relief therefrom, or from applying to the Court for additional protective orders, or from  
5 agreeing among themselves to modify or vacate this Protective Order, subject to the approval of  
6 the Court.

GITA GREEN, INC.,	)	Case No.: 2:14-cv-00715-JAD-GWF
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
WEPE INDUSTRY, L.L.C.	)	
	)	
Defendant.	)	

I, \_\_\_\_\_, hereby certify that:

2. I agree to be bound by the terms of the Protective Order. I agree to use Confidential Information provided to me pursuant to the Protective Order in this case only for purposes of this litigation.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action may subject me, without limitation, to penalties for contempt of court.

4. I submit to the jurisdiction of the court in the above-captioned action for the purpose of enforcing the terms of the Protective Order and freely and knowingly waive any right that I may otherwise have to object to the jurisdiction of said court.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

1  
2 **APPROVED AS TO FORM:**

3 DATED this 17th day of September, 2014.

4 **DURHAM JONES & PINEGAR**

5  
6 By: /s/ Clinton E. Duke

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8 Nevada Bar No. 8783

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19 [cduke@djplaw.com](mailto:cduke@djplaw.com)

20 *Attorneys for Plaintiff, Gita Green, Inc.*

21  
22 **IT IS SO ORDERED:**

23 

24 United States Magistrate Judge

25 George Foley, Jr.

26 Dated: September 18, 2014

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